debt" because it is a fixed sum due by law, "but technically a tax is not a debt, and should not be so regarded for the purpose of enforcement and collection." [9] Nevertheless there are some decisions to the effect that where the statute creating the tax provides no method of enforcement, the state or the tax collector may sue in *assumpsit* on non-payment.[10] These cases do not, however, stand on the ground that where there is a right there is a remedy, and that as a tax is a debt *assumpsit* lies, but on the ground of a presumed legislative intent to grant the state a right of action for the enforcement of the tax,[11] and an opposite result has been reached when no such intention could be presumed.[12] They are therefore not to be considered as authority for allowing the action under all circumstances.[13] A tax is an impost of the government, a charge upon certain property of its citizens,[14] for the enforcement of which a special remedy is generally provided, and, aside from the technical difficulties of allowing an action at law in the nature of *assumpsit*, common law principles are against the subjection of taxpayers to the extra expense and harassment of suits at law growing out of burdens already sufficiently troublesome.[15] And accordingly the weight of recent authority seems to be that *assumpsit* ordinarily does not lie.[16]

In a recent case the United States brought *indebitatus assumpsit* against a vendor of land, claiming a large sum under the Spanish War Tax, which provided for a fine in case of default. The court held that a tax was not a debt, that the statutory remedy was exclusive, and that the action could not be maintained. *United States* v. *Chamberlain*, 5 The Law 202 (C. C. A. Eighth Circ.). Although the sovereign is not bound by a statute unless expressly named, and is consequently not restricted to the remedy there given,[17] and can enforce the tax in any proper method, it seems better, both on principle and authority, to confine the action of *assumpsit* to cases where the statute has provided for it expressly, or impliedly in certain cases by giving no remedy at all.

RECENT CASES.

AGENCY — EFFECT OF STATUTES ON RELATION — MASTER'S LIABILITY TO PROVIDE SAFE PLACE TO WORK. — A statute required the employment in every mine of a mining boss whose duty it was, as the miners advanced in their excavations, to see that all loose coal overhead was carefully secured against falling. The plaintiff, one of the defendant's miners, was injured by a fall of coal from the roof of the room in which he was working, owing to the negligent

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[9] Appleton *v.* Hopkins, *supra*, 533.

[10] Mayor *v.* Howard, 6 Har. & J. (Md.) 383.

[11] As where the statute provides for the results of an action without expressly giving it. State *v.* Snyder, 139 Mo. 549. Or a previous statute gives it; the remedy then being in existence for one tax can be implied for the enforcement of another. Dashiell *v.* Mayor, 45 Md. 615. See also Richardson *v.* Boston, 148 Mass. 508, 510.

[12] Louisville Water Co. *v.* Commonwealth, 89 Ky. 244.

[13] *Cf.* McKeesport Borough *v.* Fidler, 147 Pa. 532; 1 Cooley, Taxation, 1 ed., 13.

[14] Peirce *v.* Boston, 3 Met. (Mass.) 520, 521.

[15] See State *v.* Piazza, 66 Miss. 426, 430.

[16] McKeesport Borough *v.* Fidler, *supra*; Plymouth County *v.* Moore, 114 Ia. 700. But see State *v.* Georgia Co., *supra*; City of Anniston *v.* Southern Ry., 112 Ala. 557.

[17] Savings Bank *v.* United States, 19 Wall. (U. S.) 227.

performance by the mining boss of the duty imposed by the statute. *Held*, that the defendant is liable. *Antioch Coal Co.* v. *Rockey*, 82 N. E. 76 (Ind.).

For a discussion of the principles involved, see 20 HARV. L. REV. 230.

BANKRUPTCY — DISCHARGE — ASSIGNMENT OF WAGES AS LIEN ON FUTURE EARNINGS. — Wages to be earned in an existing employment were assigned as security for a debt. The assignor received his discharge in bankruptcy. The assignee endeavored to collect wages subsequently earned in the course of the original employment. *Held*, that the assignment operates to transfer to the assignee a potential possession of the future wages, which constitutes a lien and is accordingly preserved by § 67 *d* of the Bankruptcy Act. *Citizens' Loan Ass'n* v. *Boston & Maine R. R. Co.*, 82 N. E. 696 (Mass.). See NOTES, p. 275.

CHATTEL MORTGAGES — RIGHTS OF INTERVENING CREDITORS — PARTIAL SALE OF MORTGAGED STOCK BY MORTGAGOR. — A storekeeper gave a mortgage on his horses, wagons, and stock. The mortgage was duly recorded. Later he became insolvent and was adjudged a bankrupt. He had sold all but $200 worth of the original stock. *Held*, that the mortgagee's lien attaches to the horses and wagons, but not to the remainder of the stock. *In re Davis*, 155 Fed. 671 (Dist. Ct., E. D. N. Y.).

A chattel mortgage giving the mortgagor a power of sale for his own benefit is void, being fraudulent towards creditors as a matter of law. See 19 HARV. L. REV. 557, 570. Among the conflicting decisions this seems to be the better and majority opinion. Under such a mortgage the mortgagee obtains no substantial security. He cannot, therefore, have entered into the transaction to secure himself, and consequently must have acted for the mortgagor. Therefore his intent must have been fraudulent, for to allow the mortgagor to have the full use of property which is forever safe from attachment defrauds his creditors. Evidence of a sale of the stock by the mortgagor for his own benefit justifies the inference of an agreement to that effect outside of the mortgage, rendering it void. *Simmons* v. *Jenkins*, 76 Ill. 479; *Hangen* v. *Hachemeister*, 114 N. Y. 566. But if fraudulent as to the stock, the mortgage is void *in toto*, and it would seem that the mortgagee had lost his lien on the horses and wagons also. *Russell* v. *Wynne*, 37 N. Y. 591.

CONFLICT OF LAWS — PERSONAL JURISDICTION — CONSENT AS BASIS. — The defendant, while residing in Australia, entered into a partnership with the plaintiff for working a gold mine there, but later moved to England. Afterwards the plaintiff brought suit in Australia to dissolve the partnership, and obtained a decree against the defendant for the latter's share of the deficiency which existed after settlement of the partnership accounts. The defendant did not appear in the Australian court, personally or by attorney. The plaintiff now brings action in England on the Australian judgment. *Held*, that since the Australian court was without jurisdiction, its judgment cannot be enforced in England. *Emanuel* v. *Symon*, 24 T. L. R. 85 (Eng., Ct. App., Nov. 15, 1907).

This decision reverses the decision of the lower court, criticized in 20 HARV. L. REV. 323.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — RIGHT TO HEARING ON TAX ASSESSMENT. — The tax law of Georgia provided that on failure to return taxable property for taxation, though without fraud, taxes should be assessed and collected without a hearing on the question of the validity of the assessment. *Held*, that this system does not afford the due process of law required by the Fourteenth Amendment. *Central of Georgia Ry.* v. *Wright*, 207 U. S. 127.

This case is in accord with the tendency of recent decisions. For a discussion thereof, see 20 HARV. L. REV. 320.

CONSTITUTIONAL LAW — PRIVILEGES AND IMMUNITIES — RIGHT TO SUE IN COURTS OF A FOREIGN STATE. — A citizen of Pennsylvania was killed in that state while in the employ of the defendant company. His widow having acquired a right of action under a Pennsylvania statute, brought suit in Ohio.